APPEAL NO. 040577
FILED APRIL 28, 2004

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq*. (1989 Act). A contested case hearing was held on February 17, 2004. The hearing officer determined that: (1) the appellant (claimant) did not sustain a compensable repetitive trauma injury, with the date of injury of _____; (2) that the claimed compensable injury of _____, does not include the right carpal tunnel syndrome (CTS), and a partial tear of the fibrocartilage of the right hand and wrist; (3) since there is no compensable injury, there can be no disability; and (4) the respondent (self-insured) did not waive the right to contest compensability of the claimed injury pursuant to Sections 409.021 and 409.022. The claimant appealed all of the hearing officer's determinations based on sufficiency of the evidence grounds. The self-insured responded, urging affirmance.

DECISION

Affirmed.

The claimant contends that the hearing officer erred in excluding her exhibit. The claimant alleged that the self-insured's "reports [were] granted and the one relevant to my injury and pain not granted." The record reflects that Claimant's Exhibit No. 7, pages 1-4 were admitted and pages 5-11 were not admitted. The hearing officer determined that pages 5-11 were not timely exchanged and no good cause was shown for the untimely exchange. We have frequently held that to obtain reversal of a judgment based upon the hearing officer's abuse of discretion in the exclusion of evidence, an appellant must first show that the exclusion was in fact an abuse of discretion, and also that the error was reasonably calculated to cause and probably did cause the rendition of an improper judgment. Texas Workers' Compensation Commission Appeal No. 92241, decided July 24, 1992; *see also* Hernandez v. Hernandez, 611 S.W.2d 732 (Tex. Civ. App.-San Antonio 1981, no writ). We perceive no abuse of discretion in the hearing officer's application of the rules relating to exchange of evidence.

The hearing officer did not err in making the complained-of determinations. The injury and extent-of-injury determinations involved questions of fact for the hearing officer to resolve. The hearing officer is the sole judge of the weight and credibility of the evidence (Section 410.165(a)) and, as the trier of fact, resolves the conflicts and inconsistencies in the evidence, including the medical evidence (Texas Employers Insurance Association v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ)). In view of the evidence presented, we cannot conclude that the hearing officer's determinations are so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986). Because the claimant did not sustain a compensable injury, the

hearing officer properly concluded that the claimant did not have disability. Section 401.011(16).

The hearing officer did not err in determining that the self-insured did not waive the right to dispute the claimed injury. Section 409.021(a) requires that a carrier act to initiate benefits or to dispute compensability within seven days of first receiving written notice of an injury or waive its right to dispute compensability. *See* Continental Casualty Company v. Downs, 81 S.W.3d 803 (Tex. 2002); Texas Workers' Compensation Commission Appeal No. 030380-s, decided April 10, 2003. The hearing officer found no carrier waiver due to the fact that the self-insured received written notice of injury on January 8, 2003, and that it filed its "cert-21" on January 14, 2003, agreeing to initiate benefits, and disputed the compensability within 60 days on January 21, 2003. We conclude that the hearing officer's determination is supported by the record and is not so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain, *supra*.

The hearing officer's decision and order are affirmed.

The true corporate name of the insurance carrier is **(a self-insured governmental entity)** and the name and address of its registered agent for service of process is

**CR**
**(ADDRESS)**
**(CITY) TEXAS (ZIP CODE)**.

_____
Veronica L. Ruberto
Appeals Judge

CONCUR:

_____
Gary L. Kilgore
Appeals Judge

_____
Edward Vilano
Appeals Judge